

LABOUR DEPARTMENT

The 23rd May, 1985

No. 9/5/84-6Lab./4028.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s Municipal Committee, Gurgaon.

IN THE COURT SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 169 of 1983

between

SHRI HUKAM SINGH II, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S. MUNICIPAL COMMITTEE, GURGAON.

Present :—

Shri S.K. Goswami for the workman.
Shri R.K. Nagpal for the respondent.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGH/60-82/25721, dated 2nd June, 1983, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the Industrial dispute existing between Shri Hukam Singh, II, workman and the respondent-management of M/S. Municipal Committee, Gurgaon. The term of the reference was :—

Whether the termination of services of Shri Hukam Singh II, was justified and in order ? If not, to what relief is he entitled ?

According to the claim statement, the workman was employed as Octroi Moharrar w.e.f. 6th July, 1979. He had acquired the status of a regular employee as he had completed 240 days of service at the time of his termination. His services were terminated illegally on 21st October, 1981. The provisions of Section 25-F of the Industrial Disputes Act were not complied with. This Act of the management is not *bona fide* as junior persons have been retained.

This reference is contested by the management. It is alleged that the Municipal Committee has been superseded and under Section 254 Haryana Municipal Act, all properties vested in the committee shall vest in the state Government. Hence State Government is a necessary party. His previous demand notice dated 20th May, 1982 was considered by the Labour Department and the workman was informed that the Government did not think it proper to send the reference. Hence the present reference is not valid and legal. On merits it is alleged that the termination is legal and *bona fide*. The applicant was enrolled in the waiting list. He was found asleep in the night during his duty hours by the administrator and a person was found importing the goods without paying octroi. There was no body to check the import of the goods. Due to this misconduct the Municipal Committee is legally entitled to terminate the services of the employee. The question of retrenchment of the employee does not arise as he was a temporary workman. His appeal was also dismissed by the Deputy Commissioner on 4th January, 1982.

In the rejoinder the workman has contended that he is not barred to seek this remedy. He has re-affirmed the averments made in claim statement.

This reference was contested on the following issues :—

1. Whether the State Government is necessary party ?
2. Whether the reference is not valid ?
3. As per reference ?

I have heard the representative of both the parties and gone through the evidence on record. My findings on the issues are as under :—

Issue No. 1 :—

The representative of the management has alleged that under Section 254 of the Haryana Municipal Act all the properties have vested in the Government. The Municipal Committee admittedly is an industry. The

workman was dismissed by the Administrator and not by the Government. Hence the Government is not the necessary party. Hence this issue is decided against the respondent.

Issue No. 2 :—

It is alleged that the previous demand notice of the workman was rejected by the Labour Department,—*vide* order dated 27th July, 1982 which is Ex. M-1. Reliance is placed on the judgement of Hon'ble Punjab and Haryana High Court in Gondhara Transport Com. Pvt. Ltd., vs. State of Punjab AIR-1966—Page 354 where in it is held that Government declining to make reference on certain demand of the union, decision is final. Second reference on same demand is without jurisdiction. This judgement has no force in view of the judgement of Hon'ble Supreme Court in Western India Match Company vs. The Western India Match Co. Workers Union LLJ-2-1970 page 256 in which it is held that appropriate Government could make reference despite its earlier order of refusal if according to it industrial dispute exists or is apprehended; HELD such earlier order refusing reference is not a bar on its power to refer the same dispute for adjudication subsequently—Difficulties experienced by the management pursuant to subsequent order of reference did not affect the jurisdiction of the appropriate Government to make the reference. Hence in view of the judgement of the Hon'ble Supreme Court the reference is valid and this issue is decided against the management.

Issue No. 3 :—

The facts of this case are admitted by both the parties. The claimant was appointed on 6th July, 1979. His services were terminated,—*vide* letter dated 21st October, 1981 Ex. M-5. The claimant had completed 240 days of service within last one year. Hence he swam in to the harbour of section 25-F of the Industrial Disputes Act, 1947. In the present case he was found asleep while on duty. No charge-sheet was issued, no enquiry was held. Compensation envisaged in Section 25-F was not offered to the workman along with termination letter. Hence the termination of the claimant was illegal and unjustified.

It is contended that the workman had filed an appeal before the Deputy Commissioner under the Municipal Act. His appeal was dismissed and hence this reference is invalid. This contention has no force. Industrial Disputes Act is an independent Act. It does not bar remedy if another remedy are available to the workman. In view of the above discussions I find that the termination of services of the workman is illegal and un-justified and he is entitled to reinstatement with continuity of service and with full back-wages. Award is answered accordingly.

Dated 23rd March, 1985.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 959 dated 1st April, 1985.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Dispute Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

The 24th May, 1985

No. 9/5/84-6 Lab./4130.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Haryana Roadways, Hissar:—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 62 of 1983

between

SHRI JAGDISH CHANDER, WORKMAN AND THE MANAGEMENT OF HARYANA
ROADWAYS, HISSAR

Present:—

Shri S.N. Vats, A.R. for the workman.

Shri V. K. Kohli, A.R. for the management.

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AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Jagdish Chander and the management of Haryana Roadways, Hissar, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/HSR/93-83/22529—33, dated 12th May, 1983 :—

Whether the termination of service of Shri Jagdish Chander was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of the reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent as Conductor on 27th March, 1968 and that his services were terminated by the respondent on 19th September, 1974 after holding a farce of enquiry, in which, he was not given an opportunity of active participation and so, the enquiry held by the respondent was biased against him, upon which no reliance can be placed by the punishing authority and as such the order of termination passed is illegal and *void ab initio* and liable to be set aside. So, there is a prayer for reinstatement with continuity of service and with full back wages.

3. In the reply filed by the respondent, it is admitted that the workman was employed in the year, 1968. Rest of the allegations have been controverted. It is alleged that a valid and proper domestic enquiry was held, in which, the workman was given full opportunity of participation and thereafter the competent authority after considering the report of the Enquiry Officer and applying its own mind, passed a valid order of termination against which the workman filed an appeal with the State Transport Controller, Haryana, Chandigarh, which also failed.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were framed on 14th September, 1984 :—

- (1) Whether this Court has no jurisdiction to adjudicate the dispute? O.P.R.
- (2) Whether valid and proper enquiry was held by the respondent?
- (3) Whether the reference is bad for non-joinder of necessary parties? O.P.R.
- (4) Whether the termination of service of Shri Jagdish Chander was justified and in order ? If not, to what relief is he entitled?

6. Before any evidence could be adduced, a settlement was arrived at, whereunder, the management has agreed to reinstate the workman with continuity of service but without back wages. The management has agreed to reinstate the workman within a week from today. So, no dispute survives for adjudication. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 30th April, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 62/83/770, dated 11th May, 1985

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.